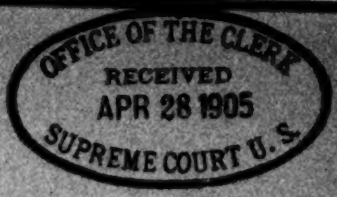
FILE COPY.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 308.

JOHN A. BENSON, APPELLANT,

vs.

WILLIAM HENKEL, U. S. MARSHAL.

PETITION FOR REHEARING.

J. C. CAMPBELL,
Attorney for Appellant and Petitioner.

HENRY B. O'REILLY,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 15762

(19,408.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 308.

JOHN A. BENSON, APPELLANT,

vs.

WILLIAM HENKEL, U. S. MARSHAL.

PETITION FOR REHEARING.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Compelled by the exigencies of the order herein to consider the decision upon telegraphic summary thereof and to submit our application for rehearing by wire, we still assure the court that, should it await printed brief, reconsideration would cordially be acceded because of the transcendent importance of the constitutional rights and questions involved as sharply presented by the declarations of the court.

Rehearing is earnestly urged, for that it is humbly suggested the court erred in its conclusions—

I. That the District of Columbia is one of the judicial districts of the nation, carved out of the Maryland district.

II. That the supreme court of the District of Columbia may exercise the same powers and jurisdiction as the courts of the United States.

III. That Congress could provide that any general law of the nation could be abrogated or repealed or its operation suspended within the District of Columbia, if inconsistent with the code thereof.

IV. That it was lawful to create in said District a court with power to exercise an amalgamated jurisdiction, local and national, and to prosecute therein offenders against the laws of the nation, and under a procedure original and appellate, essentially different from that prevailing in the courts of the nation.

Petitioner is prepared to demonstrate, as he believes, from the Constitution and law of the land embracing the decisions of this court—

A. That full remedy and punishment in every possible emergency has been provided for all crimes, local or national, committed within the District of Columbia, and for the effective extradition of all fugitives from the justice thereof.

B. That for any crime against the nation committed within the United States, as well within the District of Columbia as elsewhere, the offender must be indicted and tried in the State and national judicial district within which the crime was committed, and in a national tribunal vested with exclusive jurisdiction thereof.

C. That the national judicial district of Maryland has ever embraced that entire State, including the District of Columbia, and was again so reiterated and declared in nineteen hundred and one.

That Congress has never attempted to change in any manner the territorial jurisdiction thereof.

That it was constitutionally impossible for Congress to create the District of Columbia a national judicial dis-

trict while it embraced portions of the States of Virginia and Maryland.

D. That the District of Columbia is as much an integral part of the State of Maryland and of that national judicial district as Fort McHenry or Baltimore, and that all crimes against the United States committed within that judicial district can only be prosecuted in the Federal courts thereof.

That thus, and thus only, is it possible to comply with the imperative mandates and requirements of the Constitution.

E. That Maryland never did or could cede to the United States any part of its territory; that the only cession possible under the Constitution was of mere legislative power over a certain area selected for the uses and purposes of the seat of government.

F. That such legislative powers are purely local and municipal and might well have been vested in commissioners selected by the President or the governor of Maryland, had the Constitution so provided.

G. The laws of the District of Columbia can have no greater force than like legislation over military, naval, or administrative reservations of the Government. And yet the most exclusive and absolute control and jurisdiction thereof vested in the Government does not supersede the laws of the State unless inconsistent with the uses and purposes of the Government.

H. That petitioner cannot be deprived, under the dome of the Capitol, of rights, privileges, and immunities guaranteed every freeman everywhere else under the palladium of the Constitution and law of the land.

Fully satisfied of the desire of the court that full justice be done the humblest suitor, petitioner rests confident in the

hope that his counsel may be afforded an opportunity for supporting these contentions with argument and authority.

J. C. CAMPBELL,
Attorney for Petitioner.
HENRY B. O'REILLY,
Of Counsel.

CERTIFICATE OF COUNSEL.

We, the undersigned, attorney and counsel for said John A. Benson, appellant and petitioner herein, do hereby certify that in our opinion there is just ground in point of law for the allowance of a rehearing in said cause.

J. C. CAMPBELL,
Attorney for Petitioner.

HENRY B. O'REILLY,
Of Counsel.